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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,991	12/17/2003	Arthur H. Laflamme JR.	071469-0306511 (PC6025A)	6448
James Klekotka Suite 10 4350 W. Chandler Blvd. Chandler, AZ 85226				
EXAMINER MOORE, KARLA A				
ART UNIT		PAPER NUMBER		
1792				
MAIL DATE		DELIVERY MODE		
07/10/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/736,991

**Applicant(s)**

LAFLAMME ET AL.

**Examiner**

KARLA MOORE

**Art Unit**

1792

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-3, 7, 9, 13, 17, 20, 22, 28, 30, 36-38 and 43  
Claim(s) withdrawn from consideration: 4-6, 8, 10-12, 14-16, 18, 21, 23-26, 29, 39-41 and 44.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Karla Moore/  
Primary Examiner, Art Unit 1792

Continuation of 11, does NOT place the application in condition for allowance because: Repeatedly in the response filed 30 June 2009, Applicant argues that there is no suggestion to combine the prior art references applied against, the presently claimed invention. In response to this argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Examiner has pointed out explicitly, where applicable, where these teachings can be found in the references. Where there is no explicit teaching, reasoning has been set forth as to why such a combination would have been obvious to one of ordinary skill in the art. Also repeatedly in the response, Applicant has argued that features are not taught by the reference basically by taking the position that because the prior art has used different language to describe the claimed feature and the benefits thereof, they are not the same features. These arguments are nonsensical. One of ordinary skill in the art, as well as intellectual property professionals, know that this is not the way that the teachings of the prior art are considered. Rather, the features themselves (regardless of how they are named) and/or what that the prior art suggest to one of ordinary skill in the art are what is of importance. Regarding Applicant's argument about the application of the teachings of *Oehrlein*, Examiner submits that Applicant is wrong to submit that cluster tools are foolproof. As like any other equipment they are not perfect. Sometimes there are glitches, sometimes normal wear and tear over time can cause a piece of equipment to perform less than optimally. Additionally, it is noted that the rejection states that exposure to harmful substances can occur purposefully and/or inadvertently. The argument does nothing to address the former scenario. Applicant has also argued that the rejection of claims 3, 13, 36 and 37 is improper because claims 36 and 37 were previously cancelled. Examiner has no idea how this could possibly render the rejection improper. Examiner apologizes for the oversight notes that as long as the pending claims are properly rejected the rejection is proper. Applicant's comments regarding Examiner's admission of using an improper combination are unfounded. No such admission is found in the pending rejections. Similarly, there are no admissions of patentability in the pending rejection. Examiner does admit to a typing error though. In the office action, claims 3, 13, 28 and 30 are rejected over the references applied to claims 1-2, 7, 9, 17, 19-20 and 22 (the claims from which the depend) further in view of *Carducci* or *Perlov*. However, in the list of references previously applied "*Morad*" has been inadvertently left-off. In the rejection of claims 1-2, 7, 9, 17, 19-20 and 22, *Morad* is clearly listed and relied upon. As the claims at issue are dependent on these claims, the rejections described earlier in the office action clearly apply to these claims, as well. Applicant has ended the response by stating that the rejections of the pending office action are based on incorrect factual findings and improper hindsight reasoning. Examiner disagrees for at least the reasons provided herein and also notes that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).